

REMARKS/ARGUMENTS

In the July 16, 2008 Office Action the Examiner made the following rejections:

- (1) Claim 2 was rejected under 35 USC 102 as being anticipated by Ley et al.
- (2) Claim 4 and 17 were rejected under 35 USC 102 as being anticipated by Kveen et al.
- (3) Claims 6 – 9 were rejected under 35 USC 103 as being unpatentable over Ley et al in view of Cohen.
- (4) Claims 14 – 16 and claims 18 – 20 were rejected under 35 USC 103 as being unpatentable over Kveen et al in view of Cohen.

In response to these rejections claims 2, 5 – 9 have been canceled along with unelected claims 10 – 13. Claim 16 has also been canceled and its limitation inserted into claim 4. Thus the first and third of these rejections is made moot.

The rejection of claims 4 and 17 as being anticipated by Kveen et al. appears to be improper as anticipation requires that each element of the claim be taught within the reference. The Examiner has indicated that this is the case. However the Examiner did not point out specific elements in the embodiments of Kveen et al. that correspond to the elements of the claim and Applicant cannot see how each and every element of the claim is taught by Kveen et al. In particular the Examiner indicated that struts of FIG. 1 of Kveen have pockets located therein with passages and the passages extend in a spiral fashion. Applicant can find no teachings in Kveen that indicate that the structure include passages however there are certainly pockets located between individual structures. These pockets are not located within individual struts (i.e. they are not located within or located “therein”) as required by the claim.

In view of this distinction between claims 4 and 17 and the teachings of the Kveen et al., reconsideration of the rejection is requested. However, with regard to claim 4, the limitation that was previously part of claim 16 has been moved into claim 4. As such claim 4 now additionally requires that the passages hold a desired drug. The inclusion of this added limitation causes claim 4 to be further distinguished from the teachings of Kveen et al. Claim 16 was previously rejected as being obvious over Kveen et al. in view of Cohen, however, this rejection appears to have been

inappropriate as no combination of Kveen and Cohen provide the passages or the inclusion of a desired drug.

Claims 14 and 15 are patentable for at least the same reasons as noted above for claim 4. This is the case as the teachings of Cohen do not address the short comings as noted above in the teachings of Kveen et al. and thus no combination of the two references can supply all the elements of the invention as claimed. Claims 18 – 20 are patentable at least for the same reasons as noted above for claim 17 as the teachings of Cohen do not address the short comings as noted above in the teachings of Kveen et al. and thus no combination of the two references can supply all the elements of the invention as claimed. Claim 20 is further distinguished from the teachings of both Cohen and Kveen et al. as neither teach the inclusion of a drug within the passages within struts of a stent. As a further note, Claim 20 does not require the formation processes of claims 18 and 19 however such formation processes provide significant advantages over the formation process of Kveen et al. as they allow the reliable formation of such passages which are difficult if not impossible to form via the methods of Kveen et al.

In view of the amendments of the claims and the remarks above it is believed that the application is in condition for allowance and as such withdrawal of the rejections and passage to allowance is earnestly solicited.

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